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Noblitt & Gilmore, LLC 4800 North Scottsdale Road Suite 6000 Scottsdale, AZ 85251			EXAMINER	
			FELTEN, DANIEL S	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/504,939

Filing Date: February 16, 2000

Appellant(s): STEPHENS ET AL.

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Daniel J. Noblitt  
(Reg. No. 35,969)  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed January 11, 2010 appealing from the Office action  
mailed February 25, 2008

**(1) Real Party in Interest**

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The following is a list of claims that are rejected and pending in the application:

Claims 24-39, 46-61 and 67-76 are rejected and appealed.

**(4) Status of Amendments After Final**

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

**(5) Summary of Claimed Subject Matter**

The examiner has no comment on the summary of claimed subject matter contained in the brief.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN

**REJECTIONS.**” New grounds of rejection (if any) are provided under the subheading “**NEW GROUNDS OF REJECTION.**”

## (7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

**(8) Evidence Relied Upon**

5,920,848 SCHUTZER et al 7-1999

5,706,406 POLLOCK 1-1998

## **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-39, 46-61 and 67-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schutzer (US 5,920,848) in view of Pollock (US 5,706,406).

Schultz discloses a consulting system, as in claims 24-30, that proves a means for distributing artificial agents (see "intelligent agent server site," column 7, lines 26-33).

An agent factory monitors financial recommendations (see column 4, lines 27-40):

Having a graphic user interface (see GUI/Internet browser) that is *configured to display*

recommendations/reports/alarms (see column 7, lines 10-12; column 8, lines 55-61; and column 11, lines 26-47);

Schulter discloses that the users may modify the payment instructions of the artificial agent to be customized to their particular needs (see Schulter, column 3, lines 5-61), but fails to disclose creating a new artificial agent per se. Pollock discloses the fact that the replacement of artificial agents are supplied by updated information to the agent which allows it to perform alternative functions (see Pollock, Abstract, column 2, lines 18+). Thus it would have been obvious for artisan to have considered that the ability for the artificial agent of Schutzer to be customized to fit the needs the customer would provide an essentially new artificial agent as discussed in Pollock because the artificial agent would be provided with information that would make it "behave" within predetermined levels or within required rules or criteria. Thus to create a new artificial agent would essential be to impart to it different or updated data when it failed to provide an expected outcome (see Pollack, column 1, lines 39+). Thus creating new agents is considered the ability of the artificial agent to "adapt" and change its behavior in new way by supplying the agent(s) new information as suggested by Schutzer (see column 3, lines 51-61).

#### **(10) Response to Argument**

On page 16, of the Appellant's Brief there is an assertion that, claim 24 requires the agent factory to monitor recommendations provided by an agent. Starting on page 5 of the applicant's specification the Appellant defines the artifical agents as

“artificially intelligent, *computer algorithms* that provide superior trading strategies, which give added value to the investment decisions of any financial professional or individual investor. The algorithm is created in an *“agent factory”* (discussed later herein) and is characterized by a set of parameter values. Preferably, the parameter values are written to a file which can then be transmitted to a user’s computer via the Internet, or other suitable method of transmission, where a set of executable programs read these parameter values and recreate the agent and its associated trading strategy and recommendations.

The *“agent factory”* produces the files with the parameter values. Preferably, the agent algorithm (i.e., how the agent reads data from files and transforms this data into a sequence of operations) does not change when agents are replaced in light of the evolving market conditions. Given the most reasonable interpretation of an agent factory

In this case the primary reference, Schulzer, discloses the use of intelligent agents for financial transactions, services accounting and advice (see column 3, lines 24-35:column 4, lines 27-59, esp. lines 26-40). The secondary reference, Pollock, discloses architecture for an artificial agent that reasons defeasibly. The 35 US C 103(a) rejection previously set forth provided reasoning for the combination of references and resolve the level of ordinary skill in the art. The Examiner respectfully submits that the applicant can not show non-obviousness by attacking references individually, where as here the rejections were made based upon a combination of references. As to the discussion of management of agents, such teaching is suggested in the previous office action whereby the system provides a means for distributing artificial agents and financial recommendations are monitored. The failure of Schutzer creating a new agent and how it would be modified by the secondary reference was previously discussed and is identically

addressed in this action where creation of a new agent was being compared to an ability for the agent to change and be provided with a new set of information which makes it behave differently.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Daniel S Felten/

Primary Examiner, Art Unit 3693

Conferees:

Vincent Millin/vm/

Appeals Appeals Practice Specialist

/Ella Colbert/

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Ella Colbert  
Primary Examiner